

Shaik Kasim and ors. Vs. State Election Commission and ors.

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Court : Andhra Pradesh

Decided On : Nov-17-2009

Reported in : 2010(1)ALT78

Judge : L. Narasimha Reddy, J.

Acts : Andhra Pradesh Municipalities Act, 1965; Andhra Pradesh Municipalities Rules

Appeal No. : Writ Petition No. 22014 of 2009

Appellant : Shaik Kasim and ors.

Respondent : State Election Commission and ors.

Advocate for Def. : V.V. Prabhakara Rao, Standing Counsel for Respondent No. 1, ;S. Nageswar Reddy, Standing Counsel for Respondent No. 2 and ;P. Govind Reddy, Adv. for Respondent No. 3

Advocate for Pet/Ap. : D. Srinivas, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

L. Narasimha Reddy, J.

1. The petitioners were elected as Councillors of Jaggaiahpet Municipality, in the election held in September 2005. All of them have won the election, on the ticket issued by the Indian National Congress. They are said to have submitted resignation to the primary membership of the political party, in March, 2009.
2. The Chairperson of the Municipality was elected as Member of Legislative Assembly (MLA) from jaggaiahpet Constituency. Thereby, the office of Chairperson became vacant.
3. The 1st respondent issued election notification on 22-09-2008 (sic. 2009), to fill up the office of Chairperson, and the election was scheduled to take place on 30-09-2009. One Sriram Subba Rao was elected as Chairperson.
4. The Presiding Officer of the Election, the 2nd respondent herein, issued notice dated 09-10-2009 to the petitioners, directing them to show cause, as to why it be not declared, that they ceased to be the Councillors, on account of their violating the whip. The petitioners challenge the show cause notice.
5. The petitioners contend that the whip was not served upon them, and that the 2nd respondent has no jurisdiction to issue that notice. It is also their case that the notice does not contain the relevant details, and that the 2nd respondent has predetermined the issue.
6. The 2nd respondent filed a counter- affidavit. He states that the whip of the Indian National Congress, in the Municipal Council, submitted a complaint, stating that the petitioners violated the whip, and steps have been initiated, as provided for under the A.P. Municipalities Act, 1965 (for short 'the Act'). He takes an objection as to the maintainability of the writ petition.
7. Heard Sri Dammalapati Srinivas, learned Counsel for the petitioners, learned Standing Counsel for the State Election Commission, and learned Government Pleader for Municipal Administration.
8. It is in rare and exceptional cases, that this Court would interfere with a show cause notice. Wherever an enactment confers power on an authority to decide the-matter, the exercise undertaken by it, cannot be interdicted, before the

determination takes place. Any party, aggrieved by such determination, can avail the remedies, as provided for under law. A show cause notice can be interfered in rare cases, such as, when the authority, that issued it, does not have jurisdiction, or that it is disqualified to exercise the power for reasons, that are recognized in law.

9. The Act provides for disqualification of Councillors, by declaring them, that they ceased to hold the office, in case it is proved that they have violated the whip. Before any declaration, as to cessation, is made, a show cause notice is required to be issued. The burden, to prove the violation of whip, is on the person, who complains of it. Issuance of it; the communication of the same to the Coucillor, and violation of the same, are to be proved. The petitioners do not contend that the 2nd respondent has no jurisdiction to issue the show cause notice. The Act and the relevant Rules confer specific power upon him. Therefore, it cannot be said that the show cause notice is without jurisdiction.

10. The other ground urged by the petitioners is that the 2nd respondent predetermined the issue. In the affidavit, a vague plea, in this regard, is raised. During the course of arguments, it is sought to be supplemented by making reference to the averments in the counter affidavit. The gist of their arguments is that the 2nd respondent referred to several facts, which are not borne out by record.

11. The petitioners do not appear to be aware of the content of the representation/complaint, submitted by the whip. The details, relating to the issuance of whip, service of the same on some members, refusal to receive the same by some others; were mentioned. Further, the 2nd respondent was very much present in the meeting, and he is aware of, what transpired thereat. The narration of these facts does not amount to taking sides, or imparting his personal knowledge.

12. Learned Counsel for the petitioners places reliance upon the judgment of this Court in W.P. No. 13970 of 2005, to support the plea as to bias. It has already been mentioned that, except that the 2nd respondent acted as the Presiding Officer, he did not have any connection, or concern with the entire issue. The

petitioners have not alleged that the 2nd respondent has any personal interest, or acquaintance with anyone. Hence, the contention advanced on behalf of the petitioners cannot be accepted.

13. The writ petition is accordingly dismissed. The petitioners are granted ten days time from today, to submit their explanations, if not already submitted.

14. There shall be no order as to costs.

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